

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DESHAWN BOOKER,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

18-CV-07019 (PMH)

PHILIP M. HALPERN, United States District Judge:

On July 24, 2014, DeShawn Booker (“Petitioner”) was convicted—following a guilty plea in the New York State Supreme Court, Sullivan County—of one count of Criminal Possession of a Weapon in the Second Degree. (*See* Doc. 11-2 at 27; Doc. 11-4 at 83-102). Petitioner was thereafter sentenced to a term of thirteen years’ incarceration with five years’ post-release supervision. (Doc. 11-2 at 27).

On August 2, 2018, Petitioner initiated the instant action—a Petition for a Writ of *Habeas Corpus* Pursuant to 28 U.S.C. § 2254—to challenge both the above-referenced conviction and sentence. (Doc. 2). On August 15, 2018, Judge Vincent L. Briccetti—before whom this matter proceeded before it was reassigned to this Court on March 17, 2020—issued an Order of Reference referring the Petition to Chief Magistrate Judge Paul E. Davison. (Doc. 7).

On September 23, 2021, Chief Magistrate Judge Davison issued a Report and Recommendation (“R&R”) recommending that the Petition be denied. (Doc. 13). The R&R advised, in pertinent part, as follows:

Pursuant to 28 U.S.C. § 636(b)(1)(C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts, the parties shall have fourteen (14) days from service of this Report and Recommendation to serve and file written objections. If copies of this Report and Recommendation are served upon the parties by

mail, the parties shall have an additional three (3) days, or a total of seventeen (17) days, from service of this Report and Recommendation to serve and file written objections.

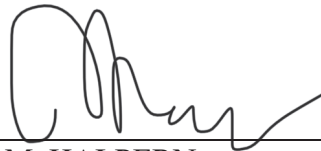
(*Id.* at 26). Chief Magistrate Judge Davison warned further that “[f]ailure to file timely objections to this Report and Recommendation will preclude later appellate review of any order of judgment that will be entered.” (*Id.*). More than a month has passed since a copy of the R&R was mailed to Petitioner, and no objections have been filed.¹

“A district court reviewing a magistrate judge’s report and recommendation ‘may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.’” *Antoine v. Warden*, No. 20-CV-05130, 2021 WL 4066654, at *1 (S.D.N.Y. Sept. 7, 2021) (quoting 28 U.S.C. § 636(b)(1)). “The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record.” *Olivo v. Graham*, No. 15-CV-09938, 2021 WL 3271833, at *1 (S.D.N.Y. July 30, 2021) (citing *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)).

Upon a careful and complete review of the R&R, the Court finds no clear error in Chief Magistrate Judge Davison’s thorough and well-reasoned analysis, and adopts the R&R in its entirety for the reasons set forth therein. Consequently, the Petition is DENIED. The Clerk of the Court is respectfully directed to mail a copy of this Order to Petitioner and close this case.

SO ORDERED:

Dated: White Plains, New York
November 5, 2021



PHILIP M. HALPERN
United States District Judge

¹ A copy of the R&R was mailed to Petitioner by Chief Magistrate Judge Davison’s chambers on September 23, 2021 (Doc. 13 at 1).